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 Attorneys for Plaintiff
 United States of America

UNITED STATES DISTRICT COURT
 DISTRICT OF OREGON
 PORTLAND DIVISION

UNITED STATES OF AMERICA,)	Case No.: 3:18-cv-201
)	
Plaintiff,)	IN ADMIRALTY
)	
vs.)	
)	
MIDNIGHT ROCKET (Official No.)	VERIFIED COMPLAINT OF THE
OR443ADY), <i>in rem</i> , and her apparel,)	UNITED STATES
tackle, and appurtenances, etc.,)	
)	
Defendant.)	
)	
)	

Plaintiff, the United States of America, alleges upon information and belief as follows:

GENERAL ALLEGATIONS

1. This is a case of admiralty and maritime jurisdiction against Defendant MIDNIGHT ROCKET (Official No. OR443ADY), *in rem*, and her respective apparel, tackle and appurtenances, as hereinafter more fully appears, and within Rule 9(h) of the Federal Rules of Civil Procedure.

2. The United States is authorized to bring this suit pursuant to 28 U.S.C. § 1345.

3. Venue is properly in this Court pursuant to 28 U.S.C. § 1391.

4. The MIDNIGHT ROCKET (Official No. OR443ADY), is now or during the pendency the action herein will be within this District.

5. At all times material herein MIDNIGHT ROCKET, based upon information and belief, was owned by Kimberly Johns.

6. At all times material herein MIDNIGHT ROCKET, based upon information and belief, was operated by Kimberly Johns.

7. At all times material herein MIDNIGHT ROCKET, based upon information and belief, was chartered by Kimberly Johns.

8. At all times material herein MIDNIGHT ROCKET, based upon information and belief, was managed by Kimberly Johns.

9. At all times material herein MIDNIGHT ROCKET, based upon information and belief, was controlled by Kimberly Johns.

10. At all times material herein the United States of America was and is the owner of Columbia River “Lighted Buoy 22A” (LLNR 10307), (hereinafter “Buoy 22A”), said

buoy at all relevant times having been located on navigable waters of the United States.

THE INCIDENT

11. On or about May 12, 2015, the MIDNIGHT ROCKET, a twin-engine 41-foot aluminum hulled recreational fishing vessel, owned and, *inter alia*, operated by Kimberly Johns, was transiting the Columbia River. During its transit the MIDNIGHT ROCKET struck Lighted Buoy 22A.

12. As a direct and proximate result of the foregoing allision Buoy 22A was injured, moved, set off station, damaged, and impaired.

13. As a direct and proximate result of the foregoing allision and the resulting injury, movement, damage, and impairment of Buoy 22A, other vessels, mariners, the public, and the marine environment were placed at risk until Buoy 22A, an essential Aid to Navigation (ATON), could be replaced and verified as watching properly and on station.

14. The foregoing dangers and risks included, but were not limited to, the inability of mariners to rely upon Buoy 22A as an aid to navigation or, alternatively, the risk of collision and/or grounding and/or injury, *etc.*, in the event mariners mistakenly did rely for navigation on an off station buoy.

15. In addition to the foregoing dangers and risks, a missing and off station buoy would constitute a hazard to navigation, *i.e.*, an allision/collision hazard and/or obstruction to other vessels and mariners transiting the Columbia River.

16. In order to minimize the foregoing risks to other vessels, mariners, the public, and the marine environment, the United States dispatched USCGC BLUEBELL, a 100 foot inland buoy tender (WLI 313), to conduct all necessary operations to rectify

the loss of a properly watching Buoy 22A.

17. USCGC BLUEBELL conducted the necessary operations and, *inter alia*, replaced the damaged ATON with a new Buoy 22A, set it on station, and assured that it was properly watching.

18. As a result of the Incident and the United States' response thereto, including, but not limited to, the costs associated with USCGC BLUEBELL and the repair and replacement costs associated with Buoy 22A, the United States has been damaged in an amount in excess of \$222,620.92, or in such other amounts as to be proved at trial, plus interest, costs, and such other amounts to which the United States may be entitled.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST THE
VESSEL (STRICT LIABILITY - 33 U.S.C. § 412)**

19. Plaintiff, United States of America, refers to and incorporates by reference as though fully set forth herein each and every foregoing paragraph of this Complaint.

20. At all material times MIDNIGHT ROCKET was a vessel "used and employed" within the meaning of 33 U.S.C. § 412.

21. As a direct and proximate result of the Incident, MIDNIGHT ROCKET unlawfully violated the provisions of the Rivers and Harbors Act, 33 U.S.C. § 408.

22. As a direct and proximate result of the Incident, MIDNIGHT ROCKET is liable to the United States under the provisions of the Rivers and Harbors Act, 33 U.S.C. § 412.

WHEREFORE, the United States of America prays as follows:

1. That, pursuant to Rule C(3) of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Honorable Court enter an order authorizing a

warrant for the arrest of the MIDNIGHT ROCKET;

2. That a warrant be issued for the arrest of the MIDNIGHT ROCKET, together with its tackle, apparel and appurtenances, *etc.*

3. That judgment of condemnation and sale be entered against the MIDNIGHT ROCKET, together with its tackle, apparel and appurtenances, *etc.*

4. That an order for interlocutory sale of the MIDNIGHT ROCKET be issued pursuant to Supplemental Admiralty Rule E(9)(b).

5. That the MIDNIGHT ROCKET be sold and that the amount of the United States' claim with interest and costs be paid out of the proceeds thereof.

6. That Judgment be entered in favor of the United States as aforesaid.

7. For such other relief as the Court deems just and proper in the premises.

Dated: January 31, 2018

CHAD A. READLER
Acting Assistant Attorney General
R. MICHAEL UNDERHILL
Attorney in Charge, West Coast Office
Torts Branch, Civil Division

s/ Eric Kaufman-Cohen
ERIC KAUFMAN-COHEN
Assistant Attorney in Charge
West Coast Office
Torts Branch, Civil Division
U.S. Department of Justice

Attorneys for Plaintiff
United States of America

VERIFICATION

Eric Kaufman-Cohen says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing Complaint, know the contents thereof, and from information and documents officially furnished to me by the United States Coast Guard, the owner of Lighted Buoy Jim Crow 22A and USCGC BLUEBELL, an agency of the United States that has incurred the damages that are the subject of this Complaint, believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

DATED: January 31, 2018

/s/ Eric Kaufman-Cohen
ERIC KAUFMAN-COHEN

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Eric Kaufman-Cohen, USDOJ Torts Branch, 450 Golden Gate Ave.,
P.O. Box 36028, San Francisco, CA 94102 (415) 436-6647

DEFENDANTS

MIDNIGHT ROCKET, Official No. OR443ADY, in rem, and her
apparel, tackle and appurtenance, etc.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity).

33 U.S.C. section 412

Brief description of cause:

IN REM ACTION FOR DAMAGES TO AID TO NAVIGATION

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
222,620.90

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/31/18

SIGNATURE OF ATTORNEY OF RECORD

Eric Kaufman-Cohen

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE